IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 962 OF 2005

Smt. Pushpa Raghunath Dharwadkar ... Appellant

V/s

Head Master, Shirgaon Higher Secondary School, Shirgaon; & anr. ... Respondents

Mr. N.V. Bandiwadekar for the appellant.

Mr. R.V. More for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 24TH OCT., 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Khed, dated 29.11.2004 dismissing her appeal and confirming the judgment and order passed by the Civil Judge, J.D., Chiplun, dismissing the plaintiff's suit.

2. The plaintiff was serving as an Assistant Teacher with defendant No.1 is the Head Master on Higher Secondary School at Chiplun and defendant No.2 is the Joint Secretary of Rayat Education Society.

3. The plaintiff had filed the suit contending that she was transferred with revenge and the order was motivated by malice and, therefore, the suit came to be filed for setting aside the order and posting to her original post.

The defendants contested the suit denying the allegations and justifying the order passed by them.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaitniff failed to prove that the transfer order was in any way illegal and was revengeful and with motivation of malice and it was also further held that the posting of the plaintiff was not proved to be inconvenient and, as such, the suit came to be dismissed.

The appeal was carried to the District Court. The learned Addl. District Judge concurred with the findings recorded by the Trial Judge and dismissed the appeal. Hence the present appeal.

5. After hearing both both sides, it appears that there is absolutely no merit in the appeal. There is no substantial question of law involved in this case.

Apart from that aspect, the evidence on record, as can be seen from the judgments of both the Courts below, is not sufficient for the plaintiff to establish any element of illegality or alleged revengeful and malice attitude towards her. Moreover, on factual aspects also, it is seen that, she was transferred from Chiplun to Panvel. It is also evident that she is residing at Chiplun. However, it is needless to mention that the service contract pre-suppose that it was a transferrable job and, as such, there was no breach of condition of service contract. Moreover, the plaintiff has also failed to show that the transfer is in any way inconvenient to her and, as such, I am not inclined to interfere in the matter and hold that the appeal deserves to be dismissed.

In the result, the appeal stands dismissed with no order as to costs.

6. However, the appellant-plaintiff is given liberty to make an application to the respondents to allow her to join the place of transfer and the respondent management shall consider the application sympathetically within six weeks from the date of its receipt.

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